



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 05, 2022

IN THE MATTER OF:

Appeal Board No. 622589

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 622584, 622585 and 622586, the claimant appeals from the decisions of the Administrative Law Judge filed March 23, 2022, insofar as they sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 16, 2020 through June 28, 2020, on the basis that the claimant was not totally unemployed and/or was ineligible to accrue effective days; charging the claimant with an overpayment of \$3,720 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4),

and \$7,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 120 effective days and charging a civil penalty of \$1,728 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 622587, 622588 and 622589, the claimant appeals from the decisions of the Administrative Law Judge filed March 23, 2022, insofar as they sustained the initial determinations disqualifying the claimant from receiving benefits, effective June 28, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$2,728 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), \$3,224 in extended

benefits recoverable pursuant to Labor Law § 597 (4), \$5,700 in Federal

Pandemic Unemployment

Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$3,224 in Pandemic Emergency Unemployment Compensation (PEUC) benefits recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$1,800 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and charging a civil penalty of \$2,231 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: In the period of March 16, 2020 through June 28, 2020, the claimant worked for this employer by providing assistance with life tasks to her mother-in-law who resided with the claimant. The claimant worked Monday through Friday each week doing this. Each week, her pay exceeded \$600. The claimant last worked for this employer on June 28, 2020. The next day, the claimant was unable to work because she was ill due to COVID. Her mother-in-law contacted the employer to have the claimant removed and replaced with another caregiver. A successor caregiver took over providing these services to the claimant's mother-in-law.

On June 8, 2020, using the internet, the claimant filed an original claim for benefits, effective March 9, 2020. As part of the claim filing process, she was directed to read and follow the advice in the on-line handbook. The handbook advised that a claimant must report all work. The handbook also advised that if a claimant is not eligible to receive benefits for any week in which the claimant earns more than the maximum benefit rate in gross wages (\$504, as of October 2019). The handbook states "Important: If you did any work on a day, even if it was an hour or less, and even if you did not receive pay, it counts as a day of work and you must report it that way".

The claimant certified for benefits online for the weeks ending June 7, 2020, June 14, 2020, June 21, 2020, and June 28, 2020. When she certified for benefits during each of these weeks, she was asked how many days she worked, including self-employment, during the week for which she was certifying. She

was also asked if she had earned more than \$504, excluding earnings from self-employment. In each of these four certifications, the claimant certified to zero days of work and certified that she did not earn more than \$504. Additionally, on July 16, 2020, a Department of Labor representative spoke to the claimant, taking her certification for additional weeks, including the week ending March 15, 2020 through the week ending June 28, 2020. As part of these certifications, the claimant was asked if she had worked, including self-employment. If she indicated that she had worked, she was asked to indicate which days of the week she worked during the week. She was again asked if she had earned more than \$504 in gross wages, excluding self-employment. She stated she did not work during each week and also that she had not earned more than \$504 during the week. As a result of these certifications, the claimant received \$3,720 in regular unemployment insurance benefits; \$7,800 in FPUC benefits; \$2,728 in regular unemployment insurance benefits; \$3,224 in extended benefits; \$5,700 in FPUC benefits; \$3,224 in PEUC benefits and \$1,800 in LWA benefits.

OPINION: The credible evidence establishes that the claimant worked on five days in each of the weeks from March 16, 2020 through June 28, 2020 and earned over \$600 each week. As the claimant does not dispute that she worked for the employer providing assistance to her mother-in-law who resided with her, we conclude that the claimant lacked total unemployment and was ineligible to accrue effective days from March 16, 2020 through June 28, 2020.

The credible evidence further establishes that the claimant received \$3,720 in regular unemployment insurance benefits which were overpaid because the claimant lacked total unemployment. The overpayment of regular unemployment insurance benefits is recoverable because of the factually false statements that she did not work or earn over \$504. Accordingly, we conclude that overpayment is recoverable.

The credible evidence establishes that the claimant received \$7,800 in FPUC benefits that the claimant was not entitled to receive because she was not totally unemployed. Consistent with federal law, we conclude that the FPUC benefits are recoverable.

The credible evidence further establishes that the claimant certified that she did not work and did not earn over \$504 work each week, when she was aware that she had worked and earned in excess of \$600.

We are not persuaded by the claimant's contention that she did not understand the questions because these work and earnings questions are straightforward questions, not requiring specialized knowledge (see Appeal Board Nos. 618402 and 542900). "Willful" as used here does not imply a criminal intent to defraud but means "knowingly", "intentionally", "deliberately" to make a false statement (see Matter of Vick, 12 AD2d 120 [3rd Dept 1960]). In addition, she had constructive notice of the Handbook that advised her to report all work and that she was ineligible to receive benefits for any week where she earned more than \$504 in gross wages. Accordingly, we conclude that the claimant's certifications constitute willful misrepresentation to obtain benefits. As the claimant made willful misrepresentations to obtain benefits, she is subject to the forfeit and civil penalties.

The credible evidence establishes that the claimant did not quit her job but was discharged. After she last worked for this employer on June 28, 2020, she was too sick to work. Her mother-in-law, the client, contacted the employer directly to have the claimant removed as her caregiver and replaced by a successor caregiver. As the employer removed the claimant from the assignment at the request of the client, the claimant did not quit but was discharged. Therefore, we conclude that her employment ended under non-disqualifying conditions. It follows that she was not overpaid \$2,728 in regular unemployment insurance benefits, \$3,224 in extended benefits, \$5,700 in FPUC benefits, \$3,224 in PEUC benefits, and \$1,800 in LWA benefits.

The credible evidence fails to establish that the claimant made a willful misrepresentation regarding her separation. The basis of the initial determination at issue was that the claimant quit concealed employment. As the claimant was discharged and did not quit, we conclude that the claimant's certification does not constitute a willful misrepresentation on this basis.

DECISION: In Appeal Board Nos. 622584, 622585 and 622586, the decisions of the Administrative Law Judge, insofar as appealed from, are affirmed.

In Appeal Board Nos. 622584, 622585 and 622586, the initial determinations, holding the claimant ineligible to receive benefits, effective March 16, 2020 through June 28, 2020, on the basis that the claimant was not totally unemployed and/or was ineligible to accrue effective days; charging the claimant with an overpayment of \$3,720 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), and \$7,800 in Federal

Pandemic Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 120 effective days and charging a civil penalty of \$1,728 on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

In Appeal Board Nos. 622587, 622588 and 622589, the decisions of the Administrative Law Judge, insofar as appealed from, are reversed.

In Appeal Board Nos. 622587, 622588 and 622589, the initial determinations, disqualifying the claimant from receiving benefits, effective June 28, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$2,728 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4),

\$3,224 in extended benefits recoverable pursuant to Labor Law § 597 (4),

\$5,700 in Federal Pandemic Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$3,224 in Pandemic Emergency Unemployment Compensation (PEUC) benefits recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$1,800 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and charging a civil penalty of \$2,231 on the basis that the claimant made willful misrepresentations to obtain benefits, are overruled.

MARILYN P. O'MARA, MEMBER